IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

(1) CIVIL WRIT No. 2341 of 1995

MOHD.SHARIF
V/S
BOARD OF REVENUE AJMER & ORS

(2) CIVIL WRIT No. 2962 of 1995

ABDUL AZIZ
V/S
BOARD OF REVENUE AJMER & ORS

(3) CIVIL WRIT No. 2963 of 1995

HAJAN LALA
V/S
BOARD OF REVENUE & AJMER & ORS

(4) CIVIL WRIT No. 3080 of 1995

MOHAMMED SARIF
V/S
BOARD OF REVENUE & AJMER & ORS

Mr. ANIL KUMAR SINGH, for the appellant / petitioner

Mr. OP BOOB, AGA, for the respondent

Date of Order : 15.5.2007

HON'BLE SHRI N P GUPTA,J.

ORDER

These four writ petitions arise against different orders of the Board of Revenue, passed on the same day,

maintaining the order of the Deputy Commissioner, Colonisation, passed in the case of Aziz (writ No.2962/95) on 27.3.92, while in other three cases passed on 7.5.92.

The Deputy Commissioner, Colonisation vide his orders mentioned above had found, that the lands allotted to the allottee could not be allotted as small patch land, and was rather required to be independently allotted by following the normal procedure of allotment, by draw of lots, on the respective entitlement, on priority basis, and he, therefore, quashed the allotment orders.

Arguing the writ petition, it was submitted, that the allotments were made in the year 1984, and thereafter, khatedari rights have been conferred, and therefore, the matter did not continue to rest in the realm of the allotment rules, so as to entitle the authorities to initiate proceedings for cancellation under Rule 22. The other submission made is, that on merits also, the authorities had gone wrong, and by referring to the site plan produced by the petitioner, in compliance of the orders of this Court dated 9.8.1995, has submitted, that from a look thereat it is clear, that the land allotted to the respective persons did constitute small patch, and has rightly been allotted. The third submission made is, that since the petitioners are continuing in possession since 1984, the allotment could not be cancelled at this belated

hour, and in this regard reliance was placed on the judgment of Hon'ble the Supreme Court in Brij Lal Vs. State reported in A.I.R. 1994 Supreme Court 1128.

On the other hand, learned counsel for the respondent raised the preliminary objection, to the effect, that in all these writ petitions, the State Government has not been impleaded as party, while the proceedings before the Dy. Commissioner, Colonisation were titled as State versus, each petitioner, similarly, in the revisions filed before the Board of Revenue by each of the petitioners, the only respondent impleaded was State of Rajasthan, and in that view of the matter, since the State Government has not been impleaded party the writ petitions are not maintainable, and in this regard reliance was placed on the judgment of Hon'ble the Supreme Court in Chief Conservator of Forests, Govt. of A.P. Vs. Collector reported in (2003)3 SCC 472. The other submission made is that since the land in question allotted to the different petitioners in all these writ petitions, has been found to be not constituting small patch, and therefore, the allotment has basically been found to be bad, simply because khatedari rights were acquired, it could not have the effect of obliterating the basic ground, rather a proper comprehension of the situation, in all the four cases collectively, does show that a systematic fraud appears to have been practiced, and big chunk of land has been got allotted in four pieces to

two different persons, purporting to be small patch, and therefore, mere conferment of khatedari rights does not come in the way of the cancellation of allotment. Then referring to the site plan produced by the petitioner, and by showing its detailed correct copy, it was contended, that the Board of Revenue, in different orders, has rightly found, that the land does not constitute small patch, and the cancellation does not require any interference. Then it was submitted, that may be that the allotment was made in the year 1984, but then the proceedings for cancellation had been initiated way-back in the year 1989 itself, and simply because the proceedings could be prolonged for one reason or the other, not wholly for the fault of the respondent, and when the allotment is inherently bad, rather tainted with fraud, mere long possession is of no consequence, as during this long period of possession, the petitioner has already reaped the benefits of the land as well.

I have considered the submissions.

A look at the four files collectively does show, that the petitioners Hajan Lala and Mohd.Aziz are mother and son, though there is nothing on record to show, as to how Mohd. Sharif is related to them; but this much is clear, that Hajan Lala and Aziz are mother and son. In this background, a look at the site plan produced by the

petitioner shows, that in Murabba No.74/30, a total land, to the extent of 11 bigha 6 biswa was available, which definitely did exceed prescribed criteria of small patch, and the land allotted to Aziz in Chak No.74/38 adjoins this land allotted, comprising in Murabba No.74/30 towards the North-West. In this background, a look at the site plan does further show, that in order to get over this aspect, about the land exceeding the limit prescribed for small patch, allotment has been made to three persons, inasmuch as, Southern part of the Murabba No.74/30 has been allotted to Hajan Lala, whose land is nowhere adjacent to this Murabba No.74/30, rather land of Mohd. Sharif, the other petitioner, is adjacent to this land towards the South. Likewise, the land allotted to Aziz in Murabba No.74/38 is also nowhere adjacent to his land, inasmuch as, from Annex.2 of this writ, it appears that khatedari land of Aziz is in Murabba No.74/47 and 74/63, which obviously is far away from the land in question. This is one aspect of the matter.

The other aspect of the matter is, that so far the allotment to Mohd. Sharif is concerned, he has been allotted two patches, one comprised in Murabba No.74/23, which is subject matter of writ petition No.2341/95, and other being in Murabba No.74/30, which is subject matter of writ petition No.3080/95. So far land comprised in writ No.3080/95 is concerned, as observed above, it is

contiguous to the land allotted as strip of land to the petitioners Hajan Lala and Aziz, and therefore it could not be said to be a small patch of land as contemplated by the Rules; and so far land allotted to Mohd. Sharif in Murabba No.74/23 is concerned, it has been found by the Board of Revenue, that another 26 bigha of uncommand adjacent land is available on the site as Government Land, which is pointed out by learned counsel for the respondent to be comprised in Murabba No.74/24, which is in the immediate South of the land allotted in Murabba No.74/23.

Thus, an over all comprehension of the things, does make it clear, that a big sizable amount of land, which was available on the site, and which could be, and was, required to be allotted as independent allotment, in accordance with rules, has been purportedly given away as small patch land to the three petitioners, by making four allotments, and by intelligently, if not mischievously, bifurcating the lands, by introducing Hajan Lala in the Southern part of the Murabba No.74/30, while it was just adjacent to the land of Mohd. Sharif situated in immediate south.

This does clearly show, that the Board of Revenue could not at all be said to be in error in arriving at the conclusions as arrived at, and in maintaining the cancellation.

Obviously, since the allotment right from the inception, clearly appears to be tainted with extraneous considerations, the mere fact, that in the interregnum period, khatedari rights have been conferred, would be of no consequence, more particularly when the proceedings for cancellation had been initiated in the year 1989 itself.

So far the long passage of time since the date of allotment is concerned, true it is that Hon'ble the Supreme Court in Brij Lal's case in para 5 has observed that since the appellant is cultivating the land since 1970, it would be travesty of justice to dispossess the appellant from the land, which he is nourishing for over a period of two decades. However, in my view a look at that judgment does show, that the facts of that case are materially different, inasmuch as in that case it was positively found, that on the date when the appellant therein applied for permanent allotment, he was holding temporary allotment, and since his temporary cultivation lease has not been cancelled, he was found to be entitled, as of right, to the permanent allotment, and then a positive finding was recorded, that there was not an iota of evidence on record to show, that the appellant was minor on the date of temporary allotment, while the allotment was sought to be cancelled on the ground, that appellant was minor at the time of allotment. Thus, in para-4 the positive finding was recorded, that

there was no basis at all for the authorities under the Rules to reach the finding that the appellant was minor on the date of temporary allotment. Thus, in my view, on the merits, the claim of the appellant therein, to maintain allotment was upheld, and with this, in para-5 it was observed that since the appellant is cultivating the land since 1970, it would be travesty of justice to dispossess the appellant from the land, which he is nourishing for over a period of two decades. In my view, this part of the observation of Hon'ble the Supreme Court cannot be said to be laying down any positive law, binding on the Courts under Article 141, to the effect, that whenever the person is having cultivatory possession for 20 years or more, he should never be dispossessed, even if the allotment has inherently been made illegally. Therefore, this long passage of time does not come, to help the petitioner much.

There is yet another aspect of the matter, which also does hunt in my mind, inasmuch as, under Rule 14 the right has been conferred for allotment of small patch of land, but then no different procedure, for allotment of “Small Patch” has been prescribed in the rules, obviously therefore, I stand advised to believe, that the general rules of allotment, prescribed in Rule 5 onwards, are required to be followed for the purpose of making allotment even for small patch of land, inasmuch as, in the entire area, the available small patches of vacant land are to be

identified and earmarked, a complete list thereof has to be prepared, thereafter they are to be advertised, and applications are to be received from the persons entitled to allotment of that small patch, under Rule 14, so as to properly, effectively, and sufficiently, comply with the requirements of letter and spirit of the Article 14 of the Constitution of India, and avoid any favoritism, or nepotism to be practiced. As against this in the present case it is not shown that any advertisement was issued, or any opportunity was given to any of the other persons, who could be entitled to allotment of the alleged strip of land, being the other adjoining cultivators.

Over and above all this, the fact also does remain, that Hon'ble the Supreme Court has clearly held in Chief Conservator of Forests' case, as relied upon by learned counsel for the respondent, that State Government was required to be impleaded as party in the writ petition, while in the present case it has not been so impleaded even though it was only the contesting litigant, and in absence thereof, the writ cannot be said to be properly constituted.

Thus, considering from all standpoints, I do not find any sufficient ground to interfere in favour of the petitioners, in any of these writ petitions.

All the four writ petitions are, therefore,

dismissed. The parties are left to bear their own costs.

(N P GUPTA),J.

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